IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

RP(FC).No.56 of 2005

MC.5/2002 of FAMILY COURT, ERNAKULAM.
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REVISION PETITIONER/RESPONDENT:

T.V. NARAYANANKUTTY, THEKKUMTHARA VEEDU,
EDANADU, CHOVVARA P.O., NOW RESIDING AT
PURAPPAYIL HOUSE, CHENGHAMMANADU DESOM,
PURAYAAR.

BY MR.SANTHAMMA ISSAC, ADVOCATE.
MR.N.C.THOMAS, ADVOCATE.
MR.CHERIAN THOMAS, ADVOCATE.

RESPONDENT/PETITIONER:

VILSUMANI, PEECHAMPILLY VEETTIL,
ELAMBAKKAPILLY P.O., KOOVAPPADY VILLAGE,
KUNNATHUNADU TALUK.

BY MR.RAJESH VIJAYAN, ADVOCATE.

THIS REV.PETITION (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 02/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RP(FC).No.56/2005

Order on Crl.M.Appln.No.4682/2005 in RP(FC).No.56/2005

Dismissed.

02.02.2007 Sd/- K. HEMA, JUDGE.

// True Copy //

P.A. to Judge.

smp

K. HEMA, J.

R.P. (FC) No.56 OF 2005

Dated this the 2nd day of February, 2007.

O R D E R

The revision petitioner challenges the order passed against him to pay Rs.400/- per month as monthly maintenance to the respondent-divorced wife.

2. The respondent filed a petition for maintenance under Section 125 of the Code of Criminal Procedure against the revision petitioner, as a divorced wife, on the allegation that he is having sufficient means as a carpenter by profession and he failed to maintain the respondent who is unable to maintain herself. The respondent sought for Rs.700/- as monthly maintenance and medical expenses.

3. It is contended that in the course of the divorce petition, the revision petitioner remarried another person and a criminal case was filed for offence under Section 494 of Indian Penal Code. The revision petitioner filed an objection and contended that two children are born in the wedlock. The elder son is employed and the daughter is maintained by the revision petitioner and the elder son. The respondent is employed in a bakery and earning Rs.1,500/- per month. The revision petitioner also contended that he is not having sufficient means and he admitted that he is a carpenter.

The earlier application filed by the respondent as M.C.No.145/99 was dismissed and the petition for restoration was also dismissed.

4. Parties adduced evidence. PW1 was examined and Exhibit A1 was marked on the side of the respondent. RW1 was examined and Exhibits B1 and B2 were marked on the side of the revision petitioner.

5. The court below found that the revision petitioner is having a monthly income of Rs.5,000/- on the basis of an admission made by him that he gets Rs.200/- per day as a carpenter by profession. It is also found that the respondent is unable to maintain herself. The contention that she is having means of her own was not substantiated by evidence. The trial court passed an order directing the revision petitioner to pay Rs.400/- per month to the respondent, which is challenged in this revision.

6. Learned counsel appearing for the revision petitioner submitted that an opportunity may be given to the revision petitioner to adduce evidence regarding the means of the respondent. An allegation was made that she is working in a bakery and getting an income of Rs.1,500/-. It is submitted that now she has shifted from the said bakery and picked up another job and she is getting more amount as income. It is also submitted that the revision petitioner was arrested consequent to a warrant issued on his failure to pay maintenance as ordered by the trial court.

7. Learned counsel appearing for the respondent vehemently opposed this suggestion. It was pointed out that the proceedings started as

early as in 1999 and the parties fell apart in 1995 itself. Thereafter several proceedings were initiated between the parties. The earlier application for maintenance was dismissed for default and thereafter the petition was filed only in 2002.

8. It was also submitted that the revision petitioner married while the divorce proceedings were pending before the court and that a case was pending for offence under Section 494 IPC, which ended up in a conviction though it was set aside on technical grounds in the appeal. The present petition is filed as a divorced wife and respondent was dragged to the court for a number of years seeking redress and getting the claim for maintenance allowed. Having obtained an order of maintenance for a meager income of Rs.400/-, at this stage it will not be just and proper to set aside the order and give an opportunity to the revision petitioner who already had sufficient opportunity to adduce evidence, it is contended.

9. On hearing both sides, I am satisfied that there was a long pendency of litigation between the parties. The respondent was neglected for more than about 10 years and even now as per the submissions made, no amount was paid, and the revision petitioner is in jail. It is not a case where no opportunity was afforded to the revision petitioner. There is nothing on record to show that he was denied any opportunity to adduce evidence in support of his contention that the respondent is able to maintain herself. That apart, even if he has a case that the respondent is employed

elsewhere, in the place other than what is alleged in the counter statement, the revision petitioner is without any legal remedy under the Code itself under Section 127.

On the facts and circumstances of this case, I find that it will result in total miscarriage of justice if the order is set aside and an opportunity is given to the revision petitioner to contest the case again on the sole disputed factum of respondent's ability to maintain herself. I do not find any reason to interfere with the order.

This revision petition is dismissed.

K. HEMA, JUDGE

smp